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## OFFICE OF THE CITY CLERK

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# REPORT

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### REPORT TO THE COMMITTEE ON RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS

DATE: SEPTEMBER 27, 1999

REPORT NO: 99-06

SUBJECT: PROPOSED AMENDMENTS TO THE SAN DIEGO CAMPAIGN  
CONTROL ORDINANCE

#### ISSUE

At the Rules Committee meeting of June 21, 1999, the City Clerk was given direction to proceed with developing amendments to the City's Campaign Control Ordinance, Chapter 2, Article 7, Division 29 of the San Diego Municipal Code, and to come back to the Rules Committee for further discussion. Several substantive amendments had been proposed by the City Clerk as part of a review and update of the City's Election Code, and included (a) making the threshold for forming a campaign committee the same as the threshold in state law; (b) increasing the contribution limits for candidate elections; and (c) providing for officeholder accounts.

#### CLERK'S RECOMMENDATION

Provide direction to the City Clerk on the proposed amendments. The Council may also wish to direct the Clerk to make additional changes.

#### DISCUSSION

Following the Rules Committee meeting on June 21, the City Clerk developed proposed language amending the Campaign Control Ordinance. A summary of the proposed amendments is discussed below and the draft is included as Attachment A. The draft incorporates some suggestions made by interested parties who responded to the Clerk's request for comments.

Other potential substantive proposals, not a part of the Clerk's present draft, are discussed later in this report.

## Summary of Proposed Amendments to San Diego Campaign Control Ordinance

### *Definitions*

In the proposed amendments, the definition of **Committee** has been changed so that the threshold for forming a committee will be consistent with state law. The definition of **Candidate** has been expanded to include elective officers, and the definition of a single **Election** has been expanded to mean the election that puts a candidate in office plus his or her term of office pursuant to winning the election. This will allow an elected official to continue to raise funds while in office. This proposal replaces an earlier one to establish a separate provision for officeholder accounts. This issue is discussed further under "Officeholder Accounts."

### *Campaign Contribution Checking Account, Contributions and Loan Reporting*

Proposed amendments provide that bank account information be reported to the City Clerk on the same forms and in the same manner as required by the Political Reform Act. The requirement that candidates file loan agreements with the City Clerk has been eliminated as most of the information required is already reported on campaign disclosure reports. The responsibility for maintaining additional information on loans has been shifted to the committee treasurer. Other amendments clarify provisions for petty cash; and the section on anonymous contributions has been amended for consistency with state law. Additionally, language has been deleted that prohibits a committee from terminating until all goods and services have been paid in full. This provision is unnecessary since vendor debt is addressed by another section.

### *Contribution Limits for Candidate Elections.*

San Diego's campaign contribution limits for candidate elections, \$250 per person per election, were established in 1973, and have remained unchanged since that time. In response to Judge Karlton's decision with regard to Proposition 208, a proposition with similar limits, his specific findings about San Diego's law, and comments from the Fair Political Practices Commission staff that the region's low limits have contributed to an increase in money laundering in local campaigns, the City Clerk is proposing that the contribution limits be increased. Options of [\$500] [ \$750] [\$1,000] per person per election are included in the draft ordinance for consideration. In previous reports the City Clerk has recommended that the limits be raised to at least \$500 per person per election, with subsequent changes tied to the rate of inflation in the consumer price index; and that the new limits go into effect in January, 2001, and be adjusted every four years thereafter.

### *Officeholder Accounts*

The attached draft does not include provisions for officeholder accounts, but provides instead that elected officers may continue to raise funds while in office. Proposed guidelines for officeholder accounts are included as Attachment B should the Rules Committee prefer the Clerk to develop provisions for officeholder accounts. These

guidelines, modeled after provisions in Proposition 208, are more restrictive than continued fundraising for campaign committees.

#### Feedback on the Proposed Draft

In August, the City Clerk's Office sent a draft of the ordinance to numerous candidates, campaign consultants, campaign treasurers, law firms and other interested organizations and individuals. Several written responses were received (Attachment C) and approximately 15 people attended a Workshop for Interested Parties on September 9, 1999 (summarized in Attachment D). There is support for making the threshold for forming a campaign committee the same as the threshold in state law and for other clarifying amendments in the draft. On the issue of raising the contribution limits and providing for officeholder accounts there was less consensus.

#### *Feedback: Contribution Limits*

Because of the controversial nature of campaign finance regulations, there was not consensus in the feedback we received with regard to raising the contribution limit. The written comments, submitted by two law firms and two political consultants, support the proposal to raise the contribution limit. This sentiment was echoed by campaign treasurers attending the public workshop. Those in support of raising the limit cited the increased costs of running a campaign, the burden on candidates to spend a significant amount of time fundraising, and the fact that low contribution limits often keep otherwise viable candidates out of the elections process. Several letters suggest that the low limit unconstitutionally infringes on the First Amendment rights of candidates. Two of the letters we received propose that the contribution limit be increased to at least \$1,000, and that it be increased immediately rather than waiting until after the 2000 elections. Another campaign fundraiser, who contacted staff by phone, suggested that there should be tiered contribution limits, with a higher limit for the City-wide offices of the Mayor and City Attorney, because campaign funds for these offices must reach a significantly greater number of people than campaign funds for Council office. It was noted that the City's contribution limit was set at a time when all Council members were elected City-wide and that it made sense at that time for the contribution limit to be the same for all elective offices.

On the other side of this issue, several individuals in attendance at the public workshop, including representatives from Common Cause and the League of Women Voters, were opposed to raising the contribution limit. In arguing against such an increase, they suggested that it is premature to raise the limit since Judge Karlton's findings regarding Proposition 208 are not final. It was noted that another trial is pending regarding the proposition, and even that decision is likely to be appealed. These workshop participants felt that the current contribution limit is at a level sufficient to run a campaign in the City of San Diego. Concern was expressed that if the contribution limit is raised to \$1,000, there would likely be million dollar campaigns that would be unfair to challengers.

### *Feedback: Fundraising by Officeholders*

We received very little feedback about the idea of providing for continued fundraising by elected officials while in office, or for officeholder accounts. The feedback we did receive was in opposition to either idea. One participant in the workshop suggested that an officeholder account would make sense if other reforms were considered, such as a ban on off-year fundraising. This same individual suggested that allowing officeholders to continue to raise money after their election, with the ability to then transfer these funds to another campaign committee, would give an unfair advantage to incumbents. This individual also suggested that allowable expenditures from an officeholder account should be narrowly drafted.

### Other Suggestions

In addition to commenting on the proposed draft, respondents to the Clerk's request for feedback suggested a number of other ideas. Because these are substantive policy proposals, they have not been incorporated into the draft, but are presented below for Council information.

- *The ordinance should avoid limits on amounts or sources of contributions to committees that make independent expenditures in light of recent legal developments.* On Thursday, September 9, 1999, a federal judge enjoined San Francisco from enforcing limits on contributions to political committees which make independent expenditures. It is likely that this decision will be appealed by the City and County of San Francisco. We have asked the City Attorney's Office for an opinion on how this decision may affect the validity of the City's ordinance.
- *The City should reconsider its ban on organizational contributions.* According to one of the letters received, San Diego is the only jurisdiction in California, and one of the few jurisdictions in the nation, which prohibits organizational contributions. One participant in our workshop indicated that this provision is probably unconstitutional. In light of the San Francisco decision referenced above, we have asked the City Attorney for an opinion on how this decision may affect the validity of the City's ordinance.
- *The City should consider a provision similar to that contained in the San Diego County ordinance that waives the contribution limit for opposing candidates if a candidate contributes or loans \$25,000 or more to his or her campaign.* In his findings on Proposition 208, Judge Karlton notes that the low contribution limit in San Diego has resulted in new forms of fundraising such as the self-funding of campaigns by candidates. Adoption of this proposal might reduce such self-funding of campaigns.

- *The ordinance should include a narrow exception to contribution limits which allows candidates and office holders to raise funds for attorneys fees without regard to contribution limits. This proposal was suggested by two separate law firms. One individual noted that this separate "Legal and Accounting Compliance" account is allowed under federal law for Presidential candidates.*
- *Sections 27.2921(d) and (e) are very stringent and should be more like state law, under which you are not required to have all the contributor information before you deposit the contributor's check. These provisions were added to the ordinance by the City Council in 1985, upon the recommendation of the Campaign Review Task Force, because many disclosure reports at that time lacked the occupation and employer information required for contributors.*
- *The City should consider a ban, similar to the one adopted by the County of San Diego, on contributions from lobbyists registered with the City. This provision was adopted by the County of San Diego in November 1998. A similar prohibition existed under Proposition 208.*

#### SUMMARY

In summary, the City Clerk is proposing a variety of amendments to the City's Campaign Control Ordinance. Other potential amendments have been presented for discussion.

I look forward to your consideration of these proposals. Should you have any questions, please contact Deputy Director Joyce Lane at extension 34024.

Sincerely,

  
Charles G. Abdelnour  
City Clerk

CGA:JL

Attachments

cc: City Manager  
Assistant City Manager  
City Attorney

## ATTACHMENT A

**DRAFT 9/27/99**

### **CHAPTER 2 - Government ARTICLE 7 - Election Code DIVISION 29 - San Diego Municipal Election Campaign Control Ordinance**

#### **SECTION 27.2901 - Purpose and Intent**

Inherent to the high cost of election campaigning is the problem of real or potential improper or corrupting influence, ~~real or potential~~, exercised by campaign contributions over elected officials. It is the purpose and intent of the City Council of the City of San Diego in enacting this division to preserve an orderly political forum in which individuals may express themselves effectively; to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in municipal elections; to prohibit contributions by organizations in order to develop a broader base of political efficacy within the community; to limit the use of loans and credit in the financing of municipal election campaigns; and to provide full and fair enforcement of all the provisions of this division. This division is enacted in accordance with the terms of Section 5 of Article XI of the Constitution of the State of California and Articles II and III of the Charter of The City of San Diego. The provisions of Section ~~27.2902~~ 0102 of this article shall not apply to this division.

#### **SECTION 27.2902 - Citation**

This division shall be cited as the San Diego Municipal Election Campaign Control Ordinance.

#### **SECTION 27.2903 - Definitions**

Whenever ~~in this division~~ the following words or phrases are used in this division, they mean:

"Agent" means a person who acts on behalf of any other person.

(a) "Broadcast station" means any person who engages in the dissemination of radio communication as defined in the Federal Communications Act of 1934, including any cable television system franchised or otherwise licensed by the City.

(b) "Candidate" means any individual who

— (1 ~~a~~) is listed on the ballot for ~~elective City office~~; or

— (2 ~~b~~) has begun to circulate nominating petitions or authorized others to do so on his or her behalf for nomination for or election to an City elective office; or

— (3 ~~c~~) has received a ~~contribution~~ or made an ~~expenditure~~ or authorized another person to receive a ~~contribution~~ or make an ~~expenditure~~ with the intent to bring about his or her nomination for or election to any City elective office; or

— (4 ~~d~~) is a City office holder who becomes the subject of a recall election. For purposes of Section 27.2903(b) (4), a City office holder "becomes the subject of a recall election" on the date a notice of intention to circulate a recall petition is published pursuant to San Diego Municipal Code section 27.2704.

"Candidate" has the same meaning as that term is defined in Section 27.0103 and also includes an individual who holds any elective office.

~~(c) "City office" means the offices of Mayor, Councilmember, and City Attorney of the City of San Diego.~~

"City" means the City of San Diego.

"City-wide General Election" has the same meaning as that term is defined in Section 27.0103.

"City-wide Primary Election" has the same meaning as that term is defined in Section 27.0103.

"Clerk" has the same meaning as that term is defined in Section 27.0103.

~~(d) "Committee" means any person or combination of persons, who for political purposes directly or indirectly: (1) R receives contributions totaling five hundred dollars (\$500) or more in a calendar year; or (2) Makes expenditures totaling five hundred dollars (\$500) or more in a calendar year. has the same meaning as that set forth in California Government Code Section 82013(a) through (c).~~

"Compensation" means any economic consideration for services rendered. This includes reimbursement for expenses.

~~(e) "Contribution"~~

~~(4 a) "Contribution" includes:~~

~~(i 1) any payment, as defined in Section 27.2903 (4); or~~

~~(ii 2) any loan, forgiveness of a loan, payment of a loan by a third party, or any enforceable promise to make a payment, except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes; or~~

~~(iii 3) forgiveness of a debt or other obligation to pay for goods or services rendered, or reduction of the amount of a debt or other obligation to pay for goods or services rendered resulting from a settlement of a claim disputed by the candidate or committee, unless it is clear from the circumstances that the amount of the reduction was reasonably based on a good faith dispute; or~~

~~(iv 4) any expenditure made at the behest of a candidate; or committee or elected officer, unless full and adequate consideration is received for making the expenditure; or~~

~~(v 5) any purchase of tickets for events such as dinners, luncheons, rallies and similar fundraising events; or~~

~~(vi 6) a Candidate's own money or property used on behalf of his or her candidacy; or~~

~~(vii 7) any granting of discounts or rebates not extended to the public generally, or any granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; or~~

~~(viii 8) any payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration; or~~

~~(ix 9) any transfer of anything of value by a committee to another committee, unless full and adequate consideration is paid.~~

~~(2 b) "Contribution" does not include:~~

~~(i 1) the transfer of anything of value if the transfer is made pursuant to an enforceable promise, to the extent that the amounts have been previously reported as a contribution; or~~

~~(ii 2) the cost of an event sponsored by any person and held in honor or on behalf of a candidate or committee when the total cost of the event is no more than five hundred dollars (\$500) and the event is not held for the purpose of obtaining contributions to the candidate or committee; or~~

(iii 3) any payment made by an individual for the individual's own travel expenses if the payment is made voluntarily and without an understanding or agreement that they shall be directly or indirectly repaid to the individual; or

(iv 4) any independent expenditure; or

(v 5) the rendering of volunteer personal services.

(f) "Controlled committee" means any committee controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if the candidate, the candidate's agent or any other committee controlled by the candidate has a significant influence on the actions or decisions of the committee.

"Council" has the same meaning as that term is defined in Section 27.0103.

"Day" means calendar day unless otherwise specified.

"District General Election" has the same meaning as that term is defined in Section 27.0103.

"District Primary Election" has the same meaning as that term is defined in Section 27.0103.

(g) "Election" has the same meaning as that term is defined in Section 27.0103, but does not include elections of the San Diego Unified School District. means any primary, general or special election held in the City of San Diego, including any initiative, referendum or recall election. Primary, general and special elections are separate elections for purposes of this Division.

(a) For the purpose of this division, a District or City-wide Primary Election, a District or City-wide General Election, and a special election are single and separate elections.

(b) For the purpose of this division, a single election includes the election that puts a candidate in office and his or her term of office held as a result of winning that election.

"Elective Office" has the same meaning as that term is defined in Section 27.0103, but does not include the office of a member of the governing board of the San Diego Unified School District.

(h) "Enforcement Authority" means the City Attorney or other special prosecutor designated by resolution of the City Council. Nothing in this Division limits the authority of any law enforcement agency or prosecuting attorney to enforce the provisions of this Division under any circumstances where the law enforcement agency or prosecuting attorney otherwise has lawful authority to do so. has the same meaning as that term is defined in Section 27.0103.

(i) "Expenditure" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the circumstances that it is not made for political purposes. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

"Gift" has the same meaning as that set forth in California Government Code Section 82028.

(j) "Independent expenditure" means any expenditure made by any person in connection with a communication which:

(1 a) expressly supports or opposes the nomination, election, defeat or recall of a clearly identified candidate; or

(2 b) expressly supports or opposes the qualification for the ballot, adoption or defeat of a clearly identified measure; or

(3 c) taken as a whole and in context, unambiguously urges a particular result in a City election.

An expenditure that is made to or at the behest of a candidate or a committee supporting or opposing a measure is not an independent expenditure.



(k) "Measure" has the same meaning as that term is defined in Section 27.0103 and means any City Charter amendment or proposition which is:

- ~~— (1 a) submitted to a popular vote at a City election by action of the City Council; or~~
- ~~— (2 b) submitted or intended to be submitted to a popular vote at a City election by the procedure of initiative or referendum whether or not it qualifies for the ballot.~~

The term "measure" does not include a recall election.

(l) "Payment" means any payment, reimbursement, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or any other thing of value, whether tangible or intangible.

(m) "Person" means any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, labor union, or any other organization or group of persons acting in concert.

"Petition" has the same meaning as that term is defined in Section 27.0103.

(n) "Political purpose" means the purpose of influencing or attempting to influence the action of the voters for or against the nomination, election, defeat or recall of any candidate ~~or holder of a City office~~, for or against the qualification of a City measure for the ballot, or for or against the adoption or defeat of any City measure.

"Special election" has the same meaning as that term is defined in Section 27.0103, but does not include elections of the San Diego Unified School District.

"Travel expenses" has the same meaning as that term is defined in Section 27.4002.

(o) "Treasurer" or "Committee treasurer" means the individual designated to perform the duties of treasurer under ~~San Diego Municipal Code section~~ Section 27.2912.

"Voter" has the same meaning as that term is defined in Section 27.0103.

(p) "Vendor" means any person who delivers goods or renders services to a candidate or committee, unless it is clear from the circumstances that they were not made for political purposes.

#### SECTION 27.2904 - Candidate and Committee Status; Duration

(a) For purposes of this ~~D~~ division, any individual who is a candidate retains the status of candidate, ~~and any person or combination of persons constituting a committee retains the status of committee~~, until that status is terminated either:

(a1) pursuant to ~~California~~ Government Code section 84214 ~~and all vendors granting credit for goods or services have been paid in full~~; or

(b2) pursuant to Sections 27.2971(c) or 27.2971(d) of this Municipal Code.

(b) For purposes of this division, any committee retains the status of committee until that status is terminated pursuant to California Government Code section 84214.

#### SECTION 27.2905 - Recall Elections

(a) An elective officer becomes the subject of a recall election on the date a notice of intention to circulate a recall petition is published pursuant to the recall provisions of this code.

(b) For purposes of this ~~D~~ division, a recall election begins on the date a notice of intention to circulate a recall petition is published pursuant to the recall provisions of this article; ~~SDMC section 27.2704~~; and, a recall election occurs whether voters cast ballots pertaining to the recall or not.

## SECTION 27.2911 - Duty to Have Campaign Treasurer

Every candidate and every committee shall have a Treasurer. A candidate may designate him- or herself as Treasurer. ~~No person other than an~~ Only an individual may be designated as a Treasurer.

## SECTION 27.2912 - Authority of Treasurer

No expenditure may be made by or on behalf of a committee without the authorization of the Treasurer. No contribution may be accepted or expenditure made by or on behalf of a committee at a time when the office of Treasurer is vacant.

## SECTION 27.2921 - Campaign Contribution Checking Account

(a) Every candidate and every committee ~~receiving contributions of five hundred dollars (\$500) or more~~ shall establish one campaign contribution checking account at an office of a bank or other financial institution providing checking account services located in the City of San Diego.

(b) Upon opening of an account, the name of the bank or other financial institution and account number thereof shall be filed with the City Clerk on the same forms and in the time and manner required by California Government Code Sections 81000 et seq. and the enforcement authority within twenty-four (24) hours.

(c) Upon opening of an account, all contributions of money or checks, or anything of value converted by such candidate or committee to money or a check, made to a candidate, to ~~a person~~ an individual on behalf of a candidate, to a committee supporting or opposing a candidate or a City measure, or to ~~a person~~ an individual on behalf of a committee supporting or opposing a candidate or a City measure shall be placed in the candidate's or committee's checking account within ten ~~(10)~~ business days.

(d) No contribution shall be deposited to a campaign contribution checking account without the receipt by the candidate or committee of that information required by California Government Code Sections ~~84210 and~~ 84211 concerning the contribution to be deposited.

(e) Any contribution not deposited within ten ~~(10)~~ business days shall be returned to the contributor as soon as possible after the tenth ~~(10)~~ business day, but no later than fifteen ~~(15)~~ business days after receipt of the contribution. ~~A candidate and a committee formed solely for the purpose of acting in aid of the nomination or election of the candidate may establish and maintain one joint checking account for the candidate and the committee.~~

## SECTION 27.2922 - Disbursements

Funds shall be disbursed from a campaign contribution checking account established pursuant to Section 27.2921 hereof only by check signed by the candidate or by the candidate's or committee's campaign treasurer or designated agents of the campaign treasurer. ~~Each candidate or committee shall maintain a written record of the payee of each check drawn on a campaign contribution checking account and an itemized record of the goods or services for which each check is issued.~~

## SECTION 27.2923 - Petty Cash Fund

~~Section 27.2922 notwithstanding, the candidate or campaign treasurer or other designated agents authorized to issue checks on a campaign contribution checking account may disburse to the candidate or committee establishing the checking account an amount not greater than \$20 per week to be used for petty cash purposes by the candidate or committee. An amount not greater than \$40 per week may be disbursed to a candidate and committee jointly establishing a campaign contribution checking account, to be used for petty cash purposes.~~

A petty cash fund may be established for each campaign bank account under the following conditions:

- (a) No more than \$100 may be held in the petty cash fund at any one time.
- (b) No expenditure that totals \$100 or more may be made from the petty cash fund.
- (c) Expenditures of less than \$100 from a petty cash fund are deemed to be expenditures from the campaign bank account.
- (d) The petty cash fund may be used for expenses associated with the candidate's election to that office or for the expenses of holding the office for which the fund was established.

## SECTION 27.2924 - Liquidation of Accounts

In the event that payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, a campaign contribution checking account may be liquidated by paying the remaining balance in the checking account to the candidate or to the committee for his or its use in any lawful manner pursuant to California Government Code Sections 81000 et seq.

## SECTION 27.2925 - ~~Accountability~~ Accounting

(a) In addition to any other requirements of this ~~D~~ivision, every candidate or committee establishing a campaign contribution checking account pursuant to this ~~D~~ivision shall maintain a record of each of the following:

- (1) any contribution offered to and refused in whole or in part by the candidate or committee; and
  - (2) any contribution received by the candidate or committee and returned ~~in whole or in part~~ to the contributor; and
  - (3) any contribution received by the candidate or committee and deposited in whole or in part into the campaign contribution checking account; and
  - (4) any disbursement made from the campaign contribution checking account.
- (b) The records required by Section 27.2925(a) shall include, but not be limited to, all of the following:
- (1) the name and address of the contributor; and
  - (2) the amount of the contribution, and the date on which it was received or offered; and
  - (3) if the contribution is made by check, a legible photocopy of the check; and
  - (4) if the contribution offered or received consists of cash, an indication that cash was offered or received, and a legible photocopy of the bank deposit slip indicating that the cash contribution was deposited into the campaign contribution checking account; and

(5) legible photocopies or originals of all bank records pertaining to the campaign contribution checking account; and

(6) if a contribution is ~~self-funded~~ made by the candidate to his or her own campaign, a statement disclosing the source of the funds; and

(7) if a contribution is of something other than money, a description of what was contributed, a reasonable good faith estimate of the monetary value of the contribution, and the basis for the estimate; and

(8) for each disbursement made from or check drawn on the campaign contribution checking account, the canceled check, the bank statement showing the disbursement, the name of the payee of each check, an itemized record of the goods or services for which each check is issued or disbursement made, and legible photocopies or originals of any invoices, bills, or other supporting documents for which funds were disbursed.

(c) The records required by Section 27.2925 (a) and (b) shall be kept by the candidate or committee treasurer establishing the account for a period of four ~~(4)~~ years following the date that the campaign statement to which they relate is filed.

(d) Each candidate and committee shall deliver, on demand, to any public officer having authority to enforce this ~~D~~ division a written authorization permitting the officer to have access to all records pertaining to the campaign contribution checking account.

(e) Each candidate and committee shall, on demand, make available to any public officer having authority to enforce this ~~D~~ division all records required by this ~~D~~ division to be maintained by the candidate or committee.

(f) Each committee that also participates in elections other than City candidate elections shall ~~segregate~~ maintain records of contributions received and expenditures made for political purposes in connection with City candidate elections, separate and distinct from the records for all other contributions or expenditures made.

## SECTION 27.2931 - Campaign Statements and Disclosures

Each candidate and committee shall file campaign statements in the time and manner required by the ~~Political Reform Act of 1974 as amended~~ (California Government Code Sections 81000 et seq. et seq.). Compliance with the disclosure requirements of the ~~Political Reform Act of 1974, as amended~~ California Government Code Sections 81000 et seq. is deemed to be compliance with this ~~S~~ section.

## SECTION 27.2940 - ~~Reserved for Future Use~~ Lawful Use of Campaign Funds

Campaign funds held by any committee formed in accordance with this division shall be governed by California Government Code Sections 81000 et seq.

## SECTION 27.2941 - Contribution Limits

(a) It is unlawful for a candidate, committee supporting or opposing a candidate, or individual person acting on behalf of a candidate or committee to solicit or accept from any other individual person a contribution which will cause the total amount contributed by that other individual person in support of or opposition to a candidate to exceed ~~two hundred fifty dollars~~ (\$250) [\$500] [\$750] [\$1,000] for any single election.

(b) It is unlawful for any individual person to make to any candidate or committee supporting or opposing a candidate a contribution that will cause the total amount contributed by that individual person in support of or opposition to a candidate to exceed ~~two hundred fifty dollars (\$250)~~ [\$500] [\$750] [\$1,000] for any single election.

(c) Nothing in this section is intended to limit the amount that a candidate may contribute to or expend on behalf of the candidate's own campaign.

(d) For purposes of Section 27.2941(a) and (b), the term "committee" includes but is not limited to a committee that makes independent expenditures.

(e) These contribution limits shall be adjusted on January 1, 2005, and every four years thereafter, based on the San Diego Consumer Price Index percentage change.

(f) The City Clerk shall publish the contribution limits on or before January 10 of the year the contribution limit is adjusted.

(g) As of January 1, 2001, a candidate with an open committee from a prior election may solicit contributions from individuals who have already contributed to his or her controlled committee, to the extent that those additional contributions do not cause the total amount contributed by any individual to exceed the contribution limits.

(h) As of January 1, 2005, and every four years thereafter when the contribution limits are adjusted pursuant to Section 27.2941(e), a candidate with an open committee from a prior election may solicit contributions from individuals who have already contributed to his or her controlled committee, to the extent that those additional contributions do not cause the total amount contributed by any individual to exceed the adjusted contribution limits.

#### SECTION 27.2942 - Limits on Loans to Candidates and Committees

(a) Except as provided in Section 27.2942(b), (c) and (e) (d), a candidate or committee may not obtain a loan in excess of the monetary limits set forth in Section 27.2941 from any person for the purpose of supporting or opposing a candidate in a City election.

(b) Subject to the disclosure requirements of Section 27.2943, a candidate may, as an individual, personally borrow any amount of money and contribute that money to the ~~candidate's~~ his or her own campaign. This includes loaning that money to the campaign.

(c) Subject to the disclosure requirements of Section 27.2943, a candidate may contribute any amount of his or her personal funds to his or her own campaign. This includes loaning that money to the campaign.

(e) (d) A committee may borrow any amount of money from any source for the purpose of supporting or opposing the qualification of a City measure for the ballot, or adopting or defeating a City measure, so long as the committee is organized solely for either of these two purposes, and pursues no other purpose.

#### SECTION 27.2943 - Disclosure, Evidence and Terms of Loans

(a) If a candidate or committee obtains or makes a loan ~~in compliance with Section 27.2942 for the purpose of supporting or opposing a candidate in a City election, including his or her own campaign~~, the candidate or committee shall comply with all of the following requirements:

(1) The candidate or committee shall document the loan by a written agreement that sets forth the lender, loan amount, funding source if different from the lender, interest rate, repayment terms, asset(s) pledged for the loan, records of payments on the loan including

legible photocopies of any canceled checks, and any other promises or conditions pertaining to the loan; and

~~(2) The candidate or committee shall file with the City Clerk a legible photocopy of the written agreement required by Section 27.2943(a) with the within five (5) calendar days of the execution of the agreement or the receipt of the loan proceeds, whichever occurs first; and~~

~~(3) (2) The candidate or committee treasurer shall personally sign a promissory note for the amount borrowed and with a specific payment schedule and other terms comparable to that which would be imposed by a commercial lending institution for loans not made for political purposes; and~~

~~(4) (3) Except as provided for by Section 27.2943(a)(4), the candidate or committee shall agree to repay the loan at a rate of interest comparable to that which would be charged by a commercial lending institution for loans not made for political purposes;~~

(4) A candidate who makes a loan to his or her committee from his or her personal funds is not required to charge interest on that loan, but may charge a rate of interest comparable to or less than that which would be charged by a commercial lending institution for loans not made for political purposes.

(5) A candidate shall not pledge security for the loan other than the personal assets of the candidate or the joint assets or community property of the candidate and the candidate's spouse, except that other individuals may pledge security for the loan in an amount not to exceed the monetary limits set forth in Section 27.2941; and

(6) A candidate or committee shall maintain copies of all loan documents, and make legible copies available for inspection, in the manner provided in Section 27.2925.

(b) Section 27.2943 does not apply to committees that are organized solely for the purpose of supporting or opposing the qualification of a City measure for the ballot or solely for the purpose of adopting or defeating a City measure, and that pursue no other purpose.

#### SECTION 27.2944 - Payment for Goods or Services

(a) Except as provided in Section 27.2945, each candidate or treasurer of a controlled committee that supports or opposes a candidate shall pay, or cause to be paid, each vendor upon receipt of the vendor's goods or services in whole or in part.

(b) Except as provided in Section 27.2945, the treasurer of a committee that makes independent expenditures in support of or in opposition to a candidate shall pay, or cause to be paid, each vendor upon receipt of the vendor's goods or services in whole or in part.

#### SECTION 27.2945 - Extensions of Vendor Credit

(a) Vendors may extend credit to candidates or committees in the ordinary course of business in the same manner as extended to persons for other than political purposes.

(b) For leases or rentals of one (1) month or more, candidates or committees that rent or lease real or personal property for political purposes shall pay at least one month's rent in advance of taking possession. Thereafter, candidates or committees shall pay rent in advance.

(c) For leases or rentals of less than one (1) month, candidates or committees that rent or lease real or personal property for political purposes shall pay in full in advance.

(d) A candidate or committee that accepts goods or services for political purposes on credit under section 27.2945(a), shall pay for those goods or services in full no later than ninety (90) calendar days after receipt of a bill or invoice and in no event later than ninety (90) calendar

days after the last day of the month in which the goods were delivered or the services were rendered.

#### SECTION 27.2946 - Continuing Violations

A candidate or committee treasurer violates Section 27.2945(b), (c) or (d) whenever the candidate or committee treasurer fails to pay any rent or for goods or services in full within the time periods set forth in Section 27.2945. Each and every day any obligation remains partially or wholly unpaid after the time periods set forth in Section 27.2945 constitutes a separate violation.

#### SECTION 27.2947 - Prohibitions and Limits on Contributions From Organizations

(a) It is unlawful for a candidate, committee, committee treasurer or other person acting on behalf of a candidate or committee to accept a contribution from any person other than an individual.

(b) It is unlawful for a person other than an individual to make a contribution to any candidate or committee, except to a committee that is organized solely for the purpose of supporting or opposing the qualification of a City measure for the ballot, or the adoption or defeat of a City measure, and the committee pursues no other purpose.

(c) For purposes of Section 27.2947(a) and (b), the term "committee" includes any committee that makes independent expenditures, in addition to any controlled committee.

(d) Notwithstanding Section 27.2947(a), a committee may accept a contribution from any person if the committee is organized solely for the purpose of supporting or opposing the qualification of a City measure for the ballot, or the adoption or defeat of a City measure, and the committee pursues no other purpose.

(e) For purposes of Section 27.2947(b) and (d), a recall election is not an election on a City measure.

#### SECTION 27.2948 - Obligation to Return Contributions

(a) If a candidate, committee, or committee treasurer is offered a contribution the acceptance of which would constitute a violation of this ~~D~~ivision, the candidate, committee or committee treasurer shall refuse the offer.

(b) If a candidate, committee, or committee treasurer receives a monetary contribution the acceptance of which would constitute a violation of this ~~D~~ivision, neither the candidate, committee, nor committee treasurer shall be subject to any penalty for receipt of that contribution if the candidate, committee, or committee treasurer:

- (1) does not deposit the contribution into the campaign contribution checking account; and,
- (2) returns the contribution within ten ~~five~~ (5) calendar days of the day the contribution was received.

(c) If a candidate, committee, or committee treasurer deposits into the campaign contribution checking account a monetary contribution the acceptance of which constitutes a violation of this ~~d~~ivision, the candidate, committee, or committee treasurer shall within ten ~~five~~ (5) calendar days of the date of the candidate's, committee's or committee treasurer's discovery of the violation report ~~provide~~ in writing to the City Clerk all facts pertaining to the contribution, including but not limited to:

(1) a copy of any check(s), draft(s), or other instrument(s) by which the contribution was made; and

(2) if made in cash, a report of the amount and denominations of currency tendered and a legible photocopy of the bank deposit slip; and

(3) if by wire or other electronic fund transfer, a legible printout or photocopy of the transaction; and

(4) a report of the means of tender, delivery or confirmation of the contribution (e.g. U.S. Postal Service or private mail, courier service, in person, etc.). If delivered in person by the contributor or the contributor's agent, the report shall include the full name, address, and telephone number of the contributor or agent.

(d) The candidate or committee treasurer shall promptly deliver from available funds, if any, an amount equal to any monetary contribution constituting a violation of this ~~d~~Division that is deposited into the campaign contribution checking account to the City Clerk and made payable to the City Treasurer. The City Treasurer shall deposit any contribution or equivalent amount he or she receives under Section 27.2948 into the City's General Fund.

#### SECTION 27.2949 - Prohibition of Anonymous Contributions

It is unlawful for any individual to make an anonymous contribution to a candidate or committee totaling \$100 or more in a calendar year. An anonymous contribution of \$100 or more shall not be kept by the intended recipient but instead shall be paid promptly ~~Total anonymous contributions to a candidate or committee which exceed in the aggregate two hundred dollars (\$200) with respect to a single election shall not be used by the candidate or committee for whom it was intended. To the extent that total anonymous contributions exceed two hundred dollars (\$200) the excess shall be paid promptly,~~ from available campaign funds, if any, to the City Clerk and made payable to the City Treasurer for deposit in the General Fund of the City.

#### SECTION 27.2950 - Prohibition of Assumed Name Contributions in the Name of Another Individual

~~No contribution shall be made, directly or indirectly, by any person or combination of persons acting jointly in a name other than the name by which they are identified for legal purposes, nor in the name of another person or combination of persons. No person shall make a contribution in his or its name of anything belonging to another person or received from another person on the condition that it be used as a contribution. When it is discovered by the campaign treasurer that a contribution has been received in violation of this section, the campaign treasurer shall pay promptly, from available funds, if any, the amount received in violation of this section to the City Treasurer for deposit in the General Fund of the City.~~

(a) It is unlawful for any individual, or combination of individuals acting jointly, to make directly or indirectly a contribution in a name other than the name by which he or she or they are identified for legal purposes.

(b) It is unlawful for any individual, or combination of individuals acting jointly, to make directly or indirectly a contribution in the name of another individual or combination of individuals.

(c) It is unlawful for any individual, or combination of individuals acting jointly, to make directly or indirectly a contribution in his or her or their name of:



- (1) anything belonging to another individual; or
- (2) anything received from another individual on the condition that it be used as a contribution.

(d) When it is discovered by the campaign treasurer that a contribution has been received and deposited in violation of Section 27.2950, the campaign treasurer shall pay promptly from available campaign funds, if any, the amount received in violation of this section. That amount shall be delivered to the City Clerk and made payable to the City Treasurer for deposit in the General Fund of the City.

#### ~~SECTION 27.2951 - Campaign Expenditures Uncontrolled by Candidate or Committee~~

~~Any Persons, or organization s not subject to the control of a candidate or committee but who makes independent expenditures for or against a candidate or committee indicate clearly on any material published, displayed or broadcast: notice that it was not authorized by a candidate or committee. , when such expenditures in whole or part would have been covered by the provisions of this ordinance if they were subject to the control of a candidate or committee.~~

#### SECTION 27.2952 - Advertising Rates; Service Fees and Charges

To the extent that any person sells space in any newspaper or magazine or sells time on a broadcast station to a candidate or committee or performs other services in connection with the campaign of the candidate or for or against the measure, the charges made for the use of such space or time shall not exceed or be less than the charges normally made for comparable use of such space or time by other users thereof.

#### SECTION 27.2954 - Suppliers of Goods and Services — Disclosure of Records Required

It is unlawful for any ~~No~~ person who supplies goods or services or both goods and services to a candidate or committee for use in connection with the campaign of ~~the a~~ candidate or for or against ~~the a~~ measure ~~shall to~~ refuse knowingly to divulge or disclose to the Enforcement Authority his or her record of any expenditures made by the candidate or committee in payment for such goods or services or both.

#### SECTION 27.2961 - Duties of City Clerk

In addition to other duties required of him under the terms of this division, the City Clerk shall:

- (a) Supply appropriate forms and manuals prescribed by the state Fair Political Practices Commission. These forms and manuals shall be furnished to all candidates and committees, and to all other persons required to report.
- (b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of state and local law.
- (c) Notify promptly all persons and known committees who have failed to file a document in the form and at the time required by state and local law.
- (d) Report apparent violations of this division and applicable state law to the Enforcement Authority.

(e) Compile and maintain a current list of all statements or parts of statements filed with the his office pertaining to each candidate and each measure.

(f) Cooperate with the Enforcement Authority in the performance of the duties of the Enforcement Authority as prescribed in this division and applicable state law.

#### SECTION 27.2963 - Enforcement Authority — Duties, Complaints, Legal Action, Investigatory Powers

(a) The Enforcement Authority shall enforce the provisions of this division.

(b) Any person who believes that a violation of any portion of this division has occurred may file a complaint with the Enforcement Authority. If the Enforcement Authority determines that there is reason to believe a violation of this division has occurred, it shall make an investigation. Whenever the Enforcement Authority has reason to believe a willful violation of this division has occurred or is about to occur, it may institute such legal action at such time as it deems necessary to prevent further violations.

(c) The Enforcement Authority shall have such investigative powers as are necessary for the performance of the duties prescribed in this division, and The Enforcement Authority may demand and shall be furnished records of campaign contributions and expenses at any time.

(d) The Enforcement Authority shall determine whether required statements and declarations have been filed as required and, if so, whether they conform with the requirements of this division.

#### SECTION 27.2971 - Penalties

(a) Any person who violates any part of this dDivision, or who counsels, aids, abets, advises, or participates with another to commit any such violation, is guilty of a misdemeanor and is subject to the penalties set forth in Chapter I of this Municipal Code.

(b) In addition to being subject to the penalties set forth in Chapter I of this Municipal Code, any person found guilty of violating Sections 27.2941 or 27.2947, or both, shall be required to forfeit the amount received in violation of this dDivision and pay over these funds to the City Treasurer for deposit in the City's General Fund.

(c) If, after an election, a candidate or office holder is convicted of a violation of any provision of this Division, the election to office of such candidate or office holder shall be void and the office shall become vacant immediately upon the later of the following two (2) dates:

(1) the date of the candidate or office holder's conviction; or

(2) the date the candidate would have taken office, if the candidate is not an incumbent.

In the event of a vacancy resulting from application of Section 27.2971(c), the vacancy shall be filled in accordance with the procedures set forth in the City Charter for the filling of vacant City offices.

(d) If a candidate is convicted of violating any provision of this dDivision any time prior to the election, the candidacy shall be terminated immediately and the person shall be no longer eligible for election.

(e) Any person convicted of a violation of any provision of this dDivision shall be ineligible to hold a City elective office for a period of five (5) years from and after the date of the conviction.

(f) Any limitation of time prescribed by law within which prosecution for a violation of any part of this dDivision must be commenced shall not begin to run until the City's discovery of the violation.

#### SECTION 27.2973 - Effect of Violation on Certification of Election Results

(a) The City Clerk shall not issue any certificate of nomination or election to any candidate until his or her campaign statements required in Section 27.2931, or, if no campaign statement is required, the written declaration permitted under Section 84212 of the California Government Code have been filed in the form and at the place required by the ~~Political Reform Act of 1974~~ California Government Code Sections 81000 et seq.

(b) The City Council shall not adopt a resolution declaring any candidate to be nominated or elected until such statements or declaration have been filed in the form and at the place required of the candidate in this division.

#### SECTION 27.2974 - Rules of Construction

This division shall be construed liberally in order to effectuate its purposes. No error, irregularity, informality, neglect or omission of any officer in any procedure taken under this division which does not directly affect the jurisdiction of the Council or the City to control campaign contributions and expenditures shall avoid the effect of this division.

#### ~~SECTION 27.2975 - Severability~~

~~If any provision of this division, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the division and the applicability of such provisions to other persons and circumstances shall not be affected thereby.~~

GUIDELINES FOR OFFICEHOLDER ACCOUNTS

General Provisions

- ◆ Each elected officer may be permitted to establish a segregated officeholder expense fund for expenses related to assisting, serving, or communicating with constituents, or with carrying out the official duties of the elected officer, provided aggregate contributions to such a fund do not exceed ten thousand dollars within any calendar year and that the expenditures are not made in connection with any campaign for elective office or ballot measure.
- ◆ No individual shall make, and no elected officer or officeholder account shall solicit or accept from any individual, a contribution or contributions to the officeholder account totaling more than [same as contribution limit for candidate elections] during any calendar year. No organization may contribute to an officeholder account.
- ◆ All expenditures from, and contributions to, an officeholder account are subject to the campaign disclosure and reporting requirements of the Political Reform Act of 1974 as amended.
- ◆ Funds remaining in an officeholder account at the end of the year may be carried over.
- ◆ Any funds in an officeholder account remaining after leaving office shall be turned over to the City's General Fund or distributed in accordance with the provisions for surplus campaign funds in the Political Reform Act of 1974 as amended.

Permissible Expenditures from an Officeholder Account

An expenditure associated with holding office is within the lawful execution of the trust imposed by Section 89510 of the Political Reform Act if it is reasonably related to a legislative or governmental purpose. Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose. For the purpose of this section, "substantial personal benefit" means an expenditure of funds which results in a direct personal benefit of more than one hundred dollars to an officeholder or any individual or individuals with authority to approve the expenditure of funds held by the officeholder account.

Officeholder funds may be used in accordance with Sections 89511 through 89518 of the Political Reform Act for such things as newsletters; tickets for events; donations to bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organizations; and other expenses specified, as long as these are directly related to a political, legislative, or governmental purpose.

**ATTACHMENT C**

**Written Comments Submitted  
Regarding Proposed Amendments to San Diego's  
Municipal Campaign Control Ordinance**

# C A M P A I G N   S T R A T E G I E S

RECEIVED  
CITY CLERK'S OFFICE  
99 AUG 23 PM 12:38  
SAN DIEGO, CALIF.

August 19, 1999

City Clerk Charles G. Abdelnour, J.D.  
202 C Street M.S. 2A  
San Diego, CA 92101

Dear Chuck:

Thank you for your request for comments regarding the proposed update of the Municipal Campaign Control Ordinance.

Increase of the individual contribution limit is long overdue. Recent court decisions strongly suggest the current limit is unconstitutional, and the FPPC has repeatedly cited it as a reason for the high number of money laundering violations in local campaigns.

However, whatever revisions occur in the contribution limit, so long as a contribution limit exists, the ordinance creates an inequity that allows candidates to make unlimited personal contributions and loans to their campaigns while restricting contributions from all other individuals.

This results in two undesirable effects: Persons able to make substantial personal contributions or loans to their own campaigns are given a significant advantage over those who do not; and candidates who carry forward large personal loans to their campaigns are able to continue raising funds long after an election cycle is completed.

I suggest the city consider a provision similar to that contained in the San Diego County ordinance that waives the contribution limit for all other candidates if a candidate contributes or loans \$25,000 or more to his or her campaign.

I also suggest the city consider a ban, similar to the one recently adopted by the County of San Diego, on contributions from lobbyists registered with the City of San Diego.

Thank you for the opportunity to comment on your update.

Sincerely,



Thomas C. Shepard  
President

LAW OFFICES OF  
NIELSEN, MERKSAMER,  
PARRINELLO, MUELLER & NAYLOR  
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

SACRAMENTO  
770 L STREET, SUITE 800  
SACRAMENTO, CALIFORNIA 95814  
TELEPHONE (916) 446-6752  
FAX (916) 446-6106

591 REDWOOD HIGHWAY, #4000  
MILL VALLEY, CALIFORNIA 94941  
TELEPHONE (415) 389-6800  
FAX (415) 388-6874

RECEIVED  
CITY CLERK'S OFFICE  
SAN FRANCISCO  
99 SEP 23 PM 4:35  
TWO TEMPERANCE CENTER, SUITE 200  
SAN FRANCISCO, CALIFORNIA 94111  
TELEPHONE (415) 389-6800  
FAX (415) 388-6874  
SAN DIEGO, CALIF.

August 27, 1999

Mr. Charles Abdelnour, Jr.  
San Diego City Clerk  
202 C Street  
San Diego, CA 92101

RE: Proposed Amendments to City's Campaign Finance Ordinance

Dear Mr. Abdelnour:

Thank you for including us on your mailing list requesting comments on the proposed changes to San Diego's Campaign Control Ordinance. Our law firm specializes in political and election law, and has several years of experience advising clients on how to comply with campaign finance ordinances in San Diego and throughout the state. In our experience, San Diego's ordinance is perhaps the most unreasonable in the state; we therefore applaud the City's efforts to amend and improve it. We offer these comments based on this experience, and not on behalf of any clients.

We wholeheartedly support the effort to increase the current \$250 per election limit on campaign contributions. As you point out, if the limit had kept pace with inflation, it should now be over \$1,000. Moreover, the costs of running a campaign have perhaps increased faster than inflation, as campaigns now must purchase computers and specialized software, maintain websites, and retain professional bookkeepers and attorneys to help them comply with the increasing number of rules and regulations governing campaigns.<sup>1</sup>

As you also point out, courts have recognized that "low" contribution limits place an unreasonable burden on candidates, requiring them to spend a disproportionate amount of time on fundraising, decreasing their ability to communicate with voters, and often keeping otherwise viable candidates out of the race. (Shrink Missouri Govt. PAC v. Adams (8th Cir. 1998) 161 F.3d 519; Pro-Life Council PAC v. FPFC (9th Cir. 1999) 164 F.3d 1189; Grant

---

<sup>1</sup> Because of the increasing complexity of complying with reporting requirements and other legal rules, San Diego should also consider allowing candidates to raise money, under separate limits, into a separate "Legal and Accounting Compliance" campaign account. Such a Compliance Account is allowed under federal law for Presidential candidates. (11 Code Fed. Regs. section 9003.3(a).)

Mr. Charles Abelnour  
San Diego City Clerk  
August 27, 1999  
Page 2

v. Meyer (10th Cir. 1987) 828 F2d. 1446.) With San Diego's population, we believe that it would be very likely that a court would similarly find that San Diego's \$250 limit unconstitutionally infringes on the First Amendment rights of candidates (if anyone could ever muster the political will to bring such a lawsuit).

However, we disagree with your proposal to raise the limit to only \$500, instead proposing that the limit be increased to at least \$1,050, to bring it in line with the increase in inflation. We also disagree with your proposal to wait until 2001 to increase the limit. Because the current law infringes on the First Amendment rights of candidates running in the upcoming 2000 elections, the City should increase the limit effective immediately. Constitutional concerns should trump political expediency.

We also wholeheartedly support the proposal to follow the definitions under state law for the terms "candidate," "committee," "election," etc. We recommend, in fact, that you replace all of the definitions in City law with the state law definitions, for the sake of clarity and consistency.

Finally, we recommend that the City reconsider its ban on contributions from PACs, labor unions and corporations. San Diego is the only jurisdiction in California, and one of the few jurisdictions in the nation, which prohibits organizational contributions. As you point out, the "unintended consequence" of the prohibition on contributions from organizations has been to increase the number of entities which "launder" contributions. Not only do labor unions and corporations have as much of a constitutional right as individuals to elect candidates who support their interests (First National Bank v. Belotti (435 U.S. 765)), but when contributions are limited to only \$1,050, no labor union or corporation could have any more influence over an election than an individual.

We look forward to commenting further on the amendments as they work their way through the legislative process.

Sincerely,



James R. Sutton



RECEIVED  
CITY CLERK'S OFFICE

# THE PRIMACY GROUP

3609 4th Ave., San Diego, CA 92103  
619/295-6923 FAX: 619/295-0487

AUG 23 PM 12:38

SAN DIEGO, CALIF.

Thursday, August 19, 1999

Charles G. Abdelnour  
City Clerk  
City of San Diego  
202 C Street  
San Diego, CA 92101

Re: Proposed Amendments to Campaign Ordinance

Dear Chuck,

I have 2 suggestions with regard to the proposed amendments to the Campaign Ordinance:

- ✓ 1. Implement the increase in the contribution limits as soon as possible.
- ✓ 2. Raise the contribution limit to \$1,000 – not \$500; and peg annual increases to inflation.

There's no political, legal or public policy reason to not proceed as I have outlined. Anything less is cowardice. Campaigns are expensive and even \$1,000 is less, in real dollars, than \$250 when this ordinance was first enacted.

We are facing a critical Mayoral election. The future of the city in the 21<sup>st</sup> Century will be debated. It would be criminal, in my opinion, to hamstring candidates by making it difficult to get their message out – and it would work to the benefit of independently wealthy candidates.

The truth of the matter, Chuck, is: there are 5 votes on the Council to enact what I have suggested. Don't be afraid to bring it forward.

Sincerely,

  
Larry Remer

RECEIVED  
CITY CLERK'S OFFICE  
Sullivan Wertz McDade & Wallace  
A PROFESSIONAL CORPORATION

99 SEP 13 AM 11:14

LAWYERS

SAN DIEGO, CALIF. 945 FOURTH AVENUE  
SAN DIEGO, CALIFORNIA 92101

SANDRA J. BROWER  
RICHARD T. FORSYTH  
ERIN M. GEE  
LYNNE L. HEIDEL  
GEORGE BURKE HINMAN  
J. MICHAEL MCDADE  
KATHLEEN J. MCKEE  
REBECCA MICHAEL  
JOHN S. MOOT  
ELAINE A. ROGERS  
BARRY J. SCHULTZ  
LEO SULLIVAN  
BRUCE R. WALLACE  
JOHN ROSS WERTZ  
PAMELA LAWTON WILSON

September 10, 1999

TELEPHONE (619) 233-1888  
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pwilson@swmw.com

OF COUNSEL  
EVAN S. RAVICH

JANE A. WHITWORTH  
ADMINISTRATOR

**VIA FACSIMILE AND U.S. MAIL**

Hon. Charles G. Abdelnour  
City Clerk, City of San Diego  
202 C Street  
San Diego, CA 92101

Re: Comments on Proposed Amendments to Campaign Ordinance

Dear Mr. Abdelnour:

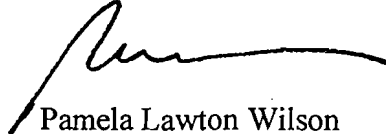
In response to your letter of August 18, 1999, requesting comment on the proposed amendments to the City's campaign ordinance, I offer the following observations:

- We agree the \$250 limit is unconstitutionally low and should be increased. The \$500 event exception under new section 82013(b)(2) should be increased proportionately.
- The provision in the ordinance that no campaign debt may be outstanding for more than 30 days is vague and unenforceable. It should be replaced with an enforcement mechanism similar to that included in the short-lived Prop. 208.
- The ordinance should address independent expenditure committees, and should avoid limits on amounts or sources of independent expenditures, in light of legal developments that make it unlikely such limits are constitutional. This change could be implemented by adopting language similar to the County of San Diego's campaign ordinance, which does not attempt to restrict the source or amount of independent expenditures, but merely makes them reportable.
- The ordinance should include a narrow exception to contribution limits that allows candidates and office holders to raise funds for attorneys fees without regard to contribution limits. This would avoid unconstitutionally interfering with a defendant's right to counsel.

Hon. Charles G. Abdelnour  
City Clerk, City of San Diego  
September 10, 1999  
Page 2

- The ordinance should clarify that recall elections are not subject to contribution limits, following the rule under state law that recall elections are constitutionally the equivalent of ballot elections.
- The City Council should consider revisions or additions to the Municipal Code to clarify the allowable content of material to be printed in the Voters Pamphlet pertaining to City elections, including candidate occupation designations, by adopting the standards provided under state law.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Pamela Lawton Wilson', written over a horizontal line.

Pamela Lawton Wilson

of

SULLIVAN WERTZ McDADE & WALLACE  
A Professional Corporation

Dear City Clerk,

Sept. 9, 1999

Whereas I believe that is good for your office to consider raising the single contributor amounts, I also believe that there is a need to change other parts of the Election Code. We need to make the law less burdensome upon the first time candidate. We need to make a process that is more inviting to the San Diego citizen. As we are a separate governing body than the State, I believe that we should use some of those powers to be more effective in getting more participation. And, whereas, it might be easier to do everything in compliance of the State code, where it is legal, I believe we should plan our own governing process.

I feel that we need to make campaigns be more accountable to the voter/citizen, and to highly penalize the candidate who knowingly, or unknowingly, is involved in high violation(s) of the Campaign Control Ordinance. In this effect, I believe that any violation of campaign laws should not be a benefit for the City and/or treasury, but should be beneficial to the next coming candidates. A special account should be set up for this purpose. Penalties should be directed to this account for future candidate use. There is no value to a law unless you can help to cause those who violate said law to reconsider the consequence of doing so, and that you can bring some type of effective advantage to those who have chosen not to break the law.

By having candidates list who has contributed to their campaign in an open dialog with the City and citizens, the public will be better served as to know how said candidates might be influenced by those contributors and/or those to whom expenditures have been made. I feel that the City needs to put contribution and expenditure lists on a format that is more available to the general public. I.E.: the Internet and community center, public library, and public school computers. I also feel that if certain publications have been given special advantages, I.E.: no copying charges or access to records more readily, then those publications should be required to broadcast candidate campaign information or at least inform where the candidates financing and expenditure data can be easily obtained. I also believe that if a candidate has Internet web pages and/or an office, that during the time these places are open, that contributor and expenditure information should be available to the public. This, in turn, would help to prepare the candidate for public life should he or she become elected. A 30 day grace period from the time of receipt of a contribution or payment of an expense should be given before the data is required to be incorporated within said list, unless other City or State law requires less time.

Elections and campaigns need reforming. The Public deserves to see where the money is coming from and to whom it is going to. And those who have been effected by wrongful dealings in campaigning procedure need to be reprimanded and disallowed from being involved in City government when they have been associated with convicted violators. Taking money from sources that have been laundering or giving illegal funds or spending expenditures illegally should not be tolerated, even if the candidate or campaign staff suggests no knowledge of the illegality. Candidates need to be held at a higher esteem. They need not to be only accountable to the public while in office, but also be accountable to the law and public when campaigning.

Sincerely,  
Daniel Beeman (619) 284-3397  
4376 Illinois Street dbeeman@acUSD.edu  
San Diego, CA  
92104-1306

**WORKSHOP FOR INTERESTED PARTIES  
ON PROPOSED AMENDMENTS TO THE  
SAN DIEGO MUNICIPAL ELECTION CAMPAIGN CONTROL ORDINANCE**

**SEPTEMBER 9, 1999**

**PUBLIC COMMENTS:**

**LISA FOSTER, REPRESENTING COMMON CAUSE:**

Ms. Foster asked if and when the draft ordinance would be docketed before Council. Deputy Director Joyce Lane, of the City Clerk's Office, explained that the Clerk's proposed amendments have been before the Rules Committee, which supported the following proposals: raising the contribution limits, instituting officeholder accounts, and making the threshold for forming a committee consistent with state law. Deanna Spehn, Rules Committee consultant, stated that after the public input, the draft ordinance would be docketed again at Rules before going to Council.

**MEL SHAPIRO, REPRESENTING SELF:**

Mr. Shapiro stated that Judge Karlton's opinion was being appealed and would probably go to the Supreme Court. He thought it was premature to base any amendment to our ordinance on a lower court's decision. He said Judge Karlton's decision says the contribution limits are set at a level precluding an opportunity to conduct a meaningful campaign and Mr. Shapiro doesn't think that is true in San Diego. He wanted to know which candidates for Council or Mayor said that the limits are too low to conduct a meaningful campaign. Mr. Shapiro said he doesn't understand why we should take one District Court Judge's opinion, which is being appealed, and use that as a basis for changing our ordinance. He said he doesn't see any need to change the limit from \$250.

Mr. Shapiro also commented about the Fair Political Practices Commission staff and their conception that the low contribution limits are resulting in money laundering in the region. He questioned, "Which region?" Ms. Lane responded, "The whole county." She stated that this county probably has lower limits than any other part of the state. Mr. Shapiro asked what our City Attorney and City Clerk were doing about this. He asked if Ms. Lane knew the specific candidates and specific contributors who were laundering. Ms. Lane stated that during the past several years, there have been several decisions both from the City Attorney's Office and the FPPC that were reported in the newspaper. She also stated Mr. Shapiro could find the information in Judge Karlton's findings.

**DANIEL BEEMAN, REPRESENTING SELF (CANDIDATE FOR COUNCIL):**

Mr. Beeman suggested that more information was needed in order to understand the definitions of certain terms within the draft ordinance. He cited the definition of "Election," subcategory (b): "For the purpose of this division, a single election includes the election that puts a candidate in office and his or her term of office held as a result

of winning that election." Mr. Beeman thought that was confusing. Ms. Lane explained that one has to win the election before being put into office. She also pointed out that subsection (a) listed different types of elections.

Ms. Lane explained that this area of the proposal would allow the continuance of fundraising (either this proposal specifically, or an officeholder account).

Mr. Beeman also brought up the matter of Section 27.2921. He said if you can win an election with less than \$500, then you shouldn't have to have a bank account. Ms. Lane pointed out that the proposed amendment would conform City law to State law.

Mr. Beeman also commented on subsection (c), which allows the creation of a committee opposing a candidate. He thought this would cause mud-slinging.

Regarding "Liquidation of Accounts," Mr. Beeman wanted to add: "including returning to contributors." Ms. Lane stated that was dealt with in another section.

Mr. Beeman also suggested that if a candidate has a web site, the names and addresses of, and amounts contributed by each contributor should be listed there.

Next, he suggested that in Section 27.2941, contribution limits should be \$1,000.

Mr. Beeman said he did not believe that amendments added by (g) and (h) were necessary.

He suggested removing the last sentence of Section 27.2946, "Continuing Violations." He thought that was too much.

Regarding Section 27.2949, "Prohibition of Anonymous Contributions," Mr. Beeman suggested the money go into a fund for candidates in the next election, instead of going into the General Fund.

**MARJORIE LARSON, REPRESENTING THE LEAGUE OF WOMEN VOTERS:**

Ms. Larson stated that she hadn't had time to read the draft. However, she was interested in knowing why there was a need to raise the limit from \$250 to \$500. She felt the present limit was adequate. She also expressed concern about the proposal for officeholder accounts.

**STANLEY IMBER, REPRESENTING COMMON CAUSE OF SAN DIEGO COUNTY:**

Mr. Imber's first concern was the proposal to permit public officials or elected officials to continue to raise funds while they were in office. He thought this would have serious, potentially corrupting effects and would easily inspire private interests to attempt to obtain favors from public officials. Secondly, he agreed with Ms. Larson regarding the concern for office-holder accounts. He said this offers a kind of slush fund where money can be spent by public officials for a number of vaguely defined purposes

loosely tied to their official duties. Mr. Imber wondered why there was a need for soliciting or taking money from private interests for a public office. He stated his belief that a City Councilmember's expenditures should be covered by the Councilmember's budget. Deputy City Attorney Cristie McGuire responded to this concern, pointing out that Proposition 73 contains a mass mailing provision which prohibits the expenditure of public money on mailings or other forms of distribution of substantially similar documents.

**MYRON JOSEPH, REPRESENTING SELF (Member of Common Cause):**

Mr. Joseph first raised the question of whether, under the current code, it was specifically illegal for an incumbent to continue to raise funds for election purposes, to which Ms. Lane responded. She again stated the need for feedback on the two separate ideas.

Mr. Joseph then raised a question regarding Sections 27.2942 (a) and (b). He didn't see how those were consistent. He suggested taking out the word "candidate" from (a) and replacing it with "committee." He said if "committee" is what is meant, then that is what should be used. Ms. Lane stated that would be looked at.

**LISA FOSTER, REPRESENTING COMMON CAUSE:**

Ms. Foster was pleased with the effort to conform the City's campaign control ordinance with State law.

Regarding officeholders raising funds, Ms. Foster raised the question of an anomalous situation where we allow incumbents who are not termed out to form a new committee and start raising money for that committee the day after they are elected, and someone who is termed out is allowed to do the same thing. She said this would create a situation for--at least the appearance of--corruption. She suggested that a ban on fund-raising during certain periods should be considered, if the concept of officeholder accounts is to move forward.

Ms. Foster was also troubled by the fact that the proposed change regarding contribution limits came about because of Judge Karlton's decision. She agreed with Mr. Shapiro and said not only is the judge's decision not final, there is a new trial pending.

She said that if personal loans were to be restricted, including restricting the time-frame in which they can be repaid, and candidates could run for re-election, then there would be a reason to talk about officeholder accounts; however, it would be hard to justify allowing candidates to raise money after they were in office if they could not run again.

She commented that an explanation of how officeholder-raised funds could be expended would be necessary.

Ms. Foster also stated that what bothered her about raising the contribution limit was the prospect of bigger races in San Diego. She said if the amount is raised to \$1,000, we would have million-dollar campaigns and that would be unfair to challengers incapable of self-financing. She suggested the possibility of higher contribution limits tied to a candidate's agreement to limit spending.

Ms. Foster also suggested consideration of full or partial public financing.

Another issue she mentioned was considering some kind of ethics commission or increased City Attorney resources for enforcement to deal with these questions, including local laundering cases. She said to make substantive changes without providing for enforcement would not be an acceptable solution for the City.

**APRIL BOLING, REPRESENTING BOLING & BOLING:**

Ms. Boling commented on the specific provision of raising the limit from \$250 to \$500 or \$1,000. She said that those proposing amendments to the campaign control ordinance need to speak not to the officeholders and candidates, but to the people who haven't run. She said in order to run a meaningful campaign, there's a given threshold of what it costs in order to reach each voter in your district. There is a threshold dollar amount that needs to be reached and with today's dollars, a \$250 contribution isn't much. Unless you are able to self-fund, you can't reach that threshold. She said the current limits are discouraging people from running for office.

The amended Section 27.2904(a) says that you can terminate the status of the committee pursuant to state law, unless outstanding debt remains. What if some of the invoices came in at the end of the campaign and the candidate lost control about what the outstanding payables were and tried to raise the money? For a losing campaign, that's almost impossible. What are you supposed to do in that situation?

Regarding Section 27.2921(b), Ms. Boling applauded the fact that there would not be different forms. Since the state is changing the filing requirements for 501 and 502 and combining them with the 410, and a copy of the 410 is already supposed to be filed with the City Clerk's Office, however, she questioned the need for the last sentence. Ms. Lane stated this would be looked at.

Section 27.2921(d). Ms. Boling said sometimes you cannot deposit a check due to something as minor as having only a post office box rather than a street address. But, as stated in (e), the check needs to be deposited within 10 days. What if you can't reach the contributor? Do you have to return the money when the person intended to contribute to that candidate? Ms. Boling stated it is hard enough to get contributions and wondered if the period of time allowed could be longer. However, if you make it longer, she said, there is a problem with crossing a disclosure period deadline. She suggested eliminating (d) and also said it hasn't been the subject of any enforcement actions to date. Ms. McGuire stated that the current provision was adopted in 1986 and that she felt it was a policy call, but it could be re-examined.



Section 27.2923 - Petty Cash Fund. Ms. Boling said thanks for getting rid of this one and providing new language.

Section 27.2924 - Liquidation of Accounts. Ms. Boling stated she was confused by what this is trying to say. It says the campaign checking account may be liquidated by paying the remaining balance to the candidate for his or her use or to the committee. Can the candidate use the money for a trip around the world? Mr. Beeman said the conclusion says funds may be used "in a lawful manner." Ms. Lane said this would be revisited.

Section 27.2925 (a) - Accounting. Ms. Boling said she didn't understand when one would be returning a contribution in part. Ms. Lane stated this would be looked at.

Page 6, (f). Ms. Boling wasn't sure what this section regarding general purpose committees meant. Ms. McGuire explained what this meant, but stated that it would be looked at.

Section 27.2941 - Contribution Limits. Ms. Boling said this is another comment from a treasurer's perspective. She stated she is not sure how the receiving committee has any way of enforcing this. This says that if the Chair Building Association PAC is going to do some independent expenditure, and then the treasurer for the candidate gets a check for \$250, the candidate's treasurer is supposed to know that accepting the check would be violating this provision. Ms. Boling stated the treasurer could call the PAC to find out, but the law prohibits coordination between those two.

Ms. Foster stated this results in people reviewing various disclosures and finding contributors who had given here and given there and gave too much. The candidate is trying to follow all the rules, yet could be in violation of them, if the contributors don't know the rules.

Ms. Boling stated that the law requires treasurers to inform potential major donors that they may be about to go over the reporting limit. So, if there is some kind of information that needs to be provided, then perhaps that should be included in the law or there should be some kind of language required at the bottom of the remittance envelope.

Ms. Foster wondered if this section was written specifically for the use of an independent expenditure committee formed for the purpose of electing or defeating a candidate. She asked at what point do the contributions made by the association member to that committee become contributions to the candidate? Is it when that committee has endorsed the candidate? Or is it when it makes its first expenditure on behalf of that candidate? An example was given in regards to a POA member making a contribution to a candidate, and the POA making an independent expenditure in support of the candidate. The member may have made the contribution long before the POA took a position.

Ms. Boling would like to see this section in particular cleaned up.

Section 27.2942 regarding loans was addressed earlier, but Ms. Boling had concerns regarding the loan of a candidate's own money. Currently, the interpretation is if the candidate loans his own money to the committee, then all of the disclosure identified in 27.2943 is required. However, as Ms. Boling reads the two sections, such a loan is really not covered under Section 27.2942 because Section 29.2741 (c) says the candidate, on behalf of the candidate's own campaign, is free to loan or contribute as much as he or she chooses.

She said if it is the intent of the Council to have that scope of disclosure on all loans, not just third party loans, then she believed Section 27.2943 should say: "If a candidate or committee obtains a loan," and skip the part that says, "in compliance with 27.2942." Right now it doesn't say "all loans," it only says, "only loans covered under 27.2942." She stated this needs to be one way or the other. The way it's being enforced is not the way it reads, in her interpretation.

Scott Tillson commented on the word "loan." He said that until one reaches Section 27.2942 (c), the section relates to a contribution by a candidate to his own committee, and the lower part is about loans and repayment, whether a loan is secured or unsecured. Ms. Boling read Section (c) to mean loan.

Ms. Boling stated that Section 27.2943 relates to her original comment about the 90-day deadline to pay off vendor credit. What if the candidate just can't pay the bill, since the candidate is precluded from going to the creditor and saying, "Please forgive it because it's going to exceed the contribution limitation," even though the candidate is working hard to get the bill paid off and maybe the candidate is slowly working on paying the bill. Does the law say that is not allowed? She understands the reason for wanting the 90 days, but said there needs to be a condition for a candidate who loses an election, is honestly trying to pay off those creditors, and can't do it in 90 days.

According to Ms. Boling, pursuant to Section 27.2947, the City of San Diego may be the only jurisdiction that does not allow for contributions from PACs or businesses. The School District is an example. Ms. Boling said this whole section should be taken out.

**LARRY SCOTT, REPRESENTING A NUMBER OF CANDIDATES:**

Mr. Scott commented that he supports Ms. Boling's position. He commented on the fact that someone brought up the issue that there was no legal need to change the law, but he applauded the City Clerk for looking to change a law that is unconstitutional.

**ROBERT KATZ, REPRESENTING SAN DIEGO ACTION NETWORK:**

Mr. Katz stated that we have survived since 1973 when the campaign control ordinance was written and we'll survive another hundred years, and he didn't understand the need to change. He said public financing is the only way to eliminate all the problems.

**SCOTT TILLSON:**

Is it conceivable that if someone contributes to candidate X and to candidate Y's committee, this would be viewed as violating Section 27.2941(b), because candidate X is in opposition to candidate Y? Ms. Lane answered, "No."

The meeting was adjourned.

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